

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

WILLIE BELL, JR.,
Plaintiff,

v.

DR. CHI NGUYEN and DR. ANDREW
WISE,
Defendants.

Case No. 13-1987 WHO (PR)

**ORDER GRANTING DEFENDANTS'
MOTION FOR SUMMARY
JUDGMENT**

Doc. No. 24

INTRODUCTION

In this federal civil rights action brought under 42 U.S.C. § 1983, plaintiff Willie Bell alleges that two dentists, employees of the Correctional State Prison (“CTF”) in Soledad, where Bell was previously incarcerated, were deliberately indifferent to his serious dental needs in violation of the Eighth Amendment. The dentists move for summary judgment.¹ For the reasons stated herein, defendants’ motion for summary judgment is GRANTED.

BACKGROUND

The parties have different views of the facts. Although none of the differences is material to the issue of whether either defendant was deliberately indifferent to Bell’s serious dental needs, the different perspectives are highlighted below.

I. Defendants’ View of the Facts

Dr. Chi Nguyen, one of the defendants, is a dentist employed by the California

¹ Bell filed an unsolicited surreply and a declaration, (doc. nos. 29, 30), after the briefing was completed. Those papers are largely duplicative of his earlier arguments and will not be considered by the Court. *See* Civil L.R. 7-3(d) (once reply is filed, no additional memoranda or papers may be filed without prior Court approval).

1 Department of Corrections and Rehabilitation (“CDCR”) who worked at CTF and treated
2 Bell from December 2008 through October 2011. (Nguyen Dec. ¶¶ 1-2, 8-15, 27.)

3 During that time period, an inmate would request a dental appointment by filling
4 out a Health Care Services Request, CDCR Form 7362, (“HCSR”) or by asking a staff
5 person to contact the dental department. (*Id.*) Each newly admitted inmate would see a
6 CDCR dentist who would assign the inmate a Dental Priority Classification Code (“DPC”) based upon the occurrence of any disease, significant malfunction or injury and
7 medical/dental necessity. (*Id.* ¶ 7.) A new DPC would be assigned to the inmate after
8 each dental appointment. (*Id.*) The DPC procedure was put in place to ensure that all
9 inmate-patients would have equitable access to dental services based on the severity of
10 their dental need. (*Id.*) Each DPC Code indicates a specific timeframe for the next dental
11 appointment. (*Id.*)

12
13 Nguyen first saw Bell on December 29, 2008, when he was complaining of a
14 sensitive upper left tooth. (*Id.* ¶ 8.) Nguyen performed a triage examination. (*Id.*)
15 Nguyen observed wear on the biting surface of tooth number 11, the upper left cuspid.
16 (*Id.*) This is often an indication that the patient grinds his teeth, which can wear the
17 enamel down and make the teeth sensitive. (*Id.*) After the examination, Nguyen
18 scheduled Bell for a comprehensive examination and assigned him a DPC-2, which is the
19 designation for interceptive care and treatment within 120 days. (*Id.*)

20 Nguyen next saw Bell on March 3, 2009 for another triage examination. *Id.*
21 ¶ 9.) Bell told Nguyen that his tooth number 14 had been throbbing, but was better. (*Id.*)
22 Bell’s x-rays showed bone loss and heavy calculus on tooth number 14. (*Id.*) Nguyen
23 diagnosed tooth number 14 with occlusal trauma, a condition where pain results from the
24 patient biting down on something hard, and where the pain dissipates over time if the
25 patient eats on the other side of the mouth. (*Id.*) Bell was assigned a DPC-2 and
26 scheduled for a comprehensive examination. (*Id.*)

27 Nguyen next saw Bell on May 28, 2009 for a comprehensive examination. (*Id.*
28 ¶ 10.) She reviewed x-rays taken on May 19, 2009 and noted that Bell had a small,

1 pigmented macule (spot) on the roof of his mouth. (*Id.*) She observed moderate wear on
2 the biting surfaces of his teeth, indicating that he grinds his teeth, moderate to heavy
3 calculus and moderate periodontitis (gum disease and bone loss). (*Id.*) These are
4 indications of poor oral hygiene and bone loss over many years. (*Id.*) Nguyen instructed
5 Bell on proper care for his teeth and scheduled him for scaling and root planing (“SRP”), a
6 deep cleaning of the teeth and root surfaces below the gums. (*Id.*) Bell was assigned a
7 DPC-2. (*Id.*)

8 Nguyen next saw Bell on August 25, 2009, when she performed a periodontal
9 examination which revealed deep periodontal pockets indicating moderate bone loss. (*Id.*
10 ¶ 11.) A deep periodontal pocket forms when the ligament surrounding the tooth separates
11 from the base of the tooth. (*Id.*) The pocket attracts bacteria and is difficult to clean. (*Id.*)
12 After this examination, Bell was assigned a DPC-2. (*Id.*)

13 On September 10, 2009, Nguyen treated Bell’s periodontitis on the right side of his
14 mouth. (*Id.* ¶ 12). Nguyen gave Bell local anesthesia, but he was still sensitive to scaling
15 and root planing when she removed the calculus. (*Id.*) Nguyen noted that Bell would need
16 more local anesthetic at the next cleaning. (*Id.*) Bell was given a DPC-2 and scheduled
17 for a SRP treatment on the left side of his mouth. (*Id.*)

18 On November 19, 2009, Nguyen continued treatment of Bell’s periodontitis on the
19 left side of his mouth. (*Id.* ¶ 13.) She gave him a stronger local anesthetic. (*Id.*) She
20 informed Bell that he had decay on the surfaces of tooth number 14, the upper left first
21 molar, and tooth number 16, the upper left third molar. (*Id.*) Bell was given a DPC-2 and
22 scheduled for an appointment for filling teeth numbers 14 and 16. (*Id.*)

23 On February 2, 2010, Nguyen filled Bell’s teeth numbers 14 and 16. (*Id.* ¶ 14).
24 The cavities were extensive. (*Id.*) To fill each cavity, Nguyen placed a base on the
25 deepest part of the cavity before condensing the amalgam and restoring the tooth. (*Id.*) In
26 instances like this, where the cavities are deep enough to require a base, Nguyen instructs
27 the patient to monitor the tooth for future symptoms and she so instructed Bell. (*Id.*) Bell
28 was assigned a DCP-2. (*Id.*)

1 On February 17, 2010, Dr. Jennings, an oral surgeon, examined Bell for the macule
2 on the roof of his mouth. (*Id.* ¶ 16.) Dr. Jennings recommended that Bell have an
3 excisional biopsy. (*Id.*) On March 25, 2010, Nguyen saw Bell for a triage examination.
4 (*Id.* ¶ 17). On April 27, 2010, Bell had oral surgery to remove the macule. (*Id.* ¶ 18.)

5 On May 3, 2010, Nguyen saw Bell for a post-operation visit. (*Id.* ¶ 19.) She noted
6 that he was taking morphine sulfate and Tylenol for pain. (*Id.*) Bell had no complaint of
7 pain. (*Id.*) Nguyen scheduled Bell for night-guard impressions. (*Id.*) A night-guard
8 would help manage Bell's grinding of his teeth during sleep. (*Id.*) Bell was assigned a
9 DPC-3. (*Id.*)

10 On June 14, 2010, Nguyen saw Bell for a triage visit. (*Id.* at 20). He had no
11 complaints of pain. Nguyen re-scheduled him for night-guard impressions. (*Id.*) He
12 remained a DPC-3. (*Id.*) On September 23, 2010, Nguyen took impressions of Bell's
13 teeth for a night-guard. (*Id.* ¶ 21). Bell remained a DPC-3. (*Id.*)

14 On October 14, 2010, Nguyen saw Bell for a periodic examination and x-rays. (*Id.*
15 ¶ 22). She delivered the night-guard to him and advised him on how to use it and take
16 care of it. (*Id.*) Bell indicated he was concerned about gum recession on the side of tooth
17 number 14, his upper left first molar. (*Id.*) He had no complaints of pain. (*Id.*) Nguyen
18 instructed Bell on proper brushing and flossing technique because she concluded that
19 Bell's gum recession was caused by improper brushing and flossing. (*Id.*)

20 Nguyen did not examine Bell again until September 2011. Bell's medical records
21 indicate that, from October 2010 through September 2011, he was seen on at least four
22 occasions by other CTF dentists and staff for continued treatment of his periodontal
23 disease and other dental conditions. (*Id.* ¶ 23). During this time, his dental priority
24 remained a DPC-3, the designation for routine rehabilitative care. (*Id.*) The records do not
25 indicate that Bell complained of pain at any of these visits. (*Id.*)

26 On August 29, 2011, Bell filled out a HCSR form stating that staff had drilled a
27 hole in his tooth and he was in pain. (*Id.* ¶ 24). This request was received by the dental
28 department on September 1, 2011. (*Id.*) On the same day the request was received, Bell

1 was seen by Dr. Marlais for a triage examination. (*Id.* ¶ 25.) Bell told Dr. Marlais that
2 there was a hole in tooth number 16 and that he had been feeling pain in that tooth off and
3 on for a few weeks. (*Id.*) Dr. Marlais ordered an x-ray. (*Id.*) After his examination, Dr.
4 Marlais recommended extraction or sedative filling of tooth number 16. (*Id.*) Bell was
5 receiving morphine and acetaminophen for pain unrelated to his tooth. (*Id.*)

6 On September 25, 2011, Bell filled out an HCSR form again stating that there was a
7 hole in his tooth and he was experiencing throbbing pain. (*Id.* ¶ 26.) The form was
8 received by the dental department on September 26, 2011. (*Id.*) The next day, September
9 27, 2011, Bell saw Nguyen at the dental clinic for an emergency appointment. (*Id.* ¶ 27.)
10 Nguyen observed incipient decay, inflamed gums and advanced bone loss around tooth
11 number 16 and diagnosed it with hyperemia, a condition that occurs when an injury,
12 infection or irritant causes the blood vessels around the tooth's pulp to dilate, resulting in
13 painful pressure. (*Id.*) Nguyen attempted to explain this to Bell, who insisted that there
14 was a hole in his tooth. (*Id.*) Bell became argumentative and belligerent and Nguyen
15 called a Correctional Officer to remove him from the clinic. (*Id.*) Nguyen recommended
16 extraction of tooth number 16 as soon as possible. (*Id.*) She noted that the CTF medical
17 department had prescribed Bell acetaminophen (Tylenol) and morphine sulfate for pain
18 that was unrelated to his tooth pain. (*Id.*) Therefore, she did not prescribe additional pain
19 medication for Bell. (*Id.*) Nguyen raised Bell's priority status to a DPC 1c and scheduled
20 him for extraction of tooth number 16. (*Id.*)

21 On September 30, 2011, Dr. Marlais extracted Bell's tooth number 16. (*Id.* ¶ 28.)
22 He prescribed Motrin, for pain, and Amoxicillin, an antibiotic. (*Id.*) Dr. Marlais
23 scheduled Bell for a post-operative visit a week later. (*Id.*)

24 On October 7, 2011, Bell saw Dr. Andrew Wise, the second defendant, for the post-
25 operative appointment. (*Id.* ¶ 29.) Wise noted the extraction site had no swelling, pain or
26 bleeding and was healing normally. (*Id.*) Bell was classified a DPC-4. (*Id.*)

27 Nguyen states that, at no time during her treatment of Bell did she intend to delay in
28 providing him dental treatment or to cause him pain, suffering or harm. (*Id.* ¶ 31.) She

also states that, at all times during her treatment of Bell, she was motivated by genuine concern for his health and well-being. (*Id.*)

II. Bell's View of the Facts

Bell agrees that Dr. Nguyen performed the work stated above. However, he states that, on November 19, 2009, when Nguyen performed the deep cleaning of his teeth and gums on the left side of his mouth, she accidentally caused a hole to be drilled in his upper left molar, tooth number 16. (Opp, Ex. a, Statement of Facts, ¶ 1.)² The next time Bell saw Nguyen, he mentioned the hole to her, but she pretended not to hear him. (*Id.*) When Bell saw Nguyen about the mouth-guard, he mentioned the hole in his tooth to her and asked if she would fill it. (*Id.* ¶ 4.) Nguyen told him the tooth could not be filled and that it was best to leave it alone because removing food particles from it would cause irritation and pain. (*Id.* ¶ 5.) Nguyen told Bell that, because he did not have all of his teeth in the back of his mouth, it was best not to do anything to irritate tooth number 16 and to leave it alone until the time came for it to be extracted. (*Id.*) Bell thought that, if the tooth can't be fixed, he would "hang on to it" until he could no longer stand it. (*Id.*)

Time passed, and Bell received his mouth-guard. (*Id.* ¶ 6.) That process turned out well. (*Id.*)

Beginning in June 2011, Bell began to experience throbbing pain in tooth number 16. (*Id.* ¶ 7.) On August 29, 2011, Bell sent in a health care request form indicating that he was in pain and requesting immediate dental care. (*Id.* ¶ 8.) Bell was "ducat" to see Wise on September 1, 2011.³ (*Id.*) Bell told the x-ray technician that Nguyen had accidentally drilled a hole in the side of his tooth while she was cleaning his teeth. (*Id.*) The x-ray technician stated that the x-ray showed that the pain was from bone loss and not a hole. (*Id.*) Bell believed she was lying to protect Nguyen. (*Id.*)

² For the purposes of this motion, it is assumed that whether Nguyen drilled a hole in Bell's tooth is disputed even though no records support Bell's allegation and the inference from the exhibits is to the contrary.

³ The parties do not define the term, "ducat." From the context of the sentences in which it appears, it seems to mean a written appointment to see a particular dentist.

Bell also told Wise about the hole in his tooth. (*Id.* ¶ 11). Wise first stated there was no hole. (*Id.*) This made Bell angry because he thought Wise also was protecting Nguyen. (*Id.*) However, when Wise checked tooth number 16 with a mirror, he said he did see a hole. (*Id.*) Even though Wise saw the hole and knew that Bell was in excruciating pain, he did not treat him at that time. (*Id.* ¶ 12.)

On September 25 and 26, Bell filed emergency health care requests, but was told no dentist was in. (*Id.* ¶ 16.) On September 27, 2011, an appointment was made for Bell to see Nguyen. (*Id.* ¶¶ 18-19). Bell attempted to explain to Nguyen about the hole in his tooth and she denied that there was a hole. (*Id.* ¶ 20.) After Nguyen examined Bell's teeth, she told him that she would schedule him back for an appointment to have the painful tooth filled or extracted. (*Id.* ¶ 26.) Bell got mad because he was in pain and needed to have the tooth treated at that time. (*Id.*) Nguyen called an officer to escort Bell from the dental clinic. (*Id.* ¶ 27.)

On September 29, 2011, no ducat came for Bell to see a dentist. (*Id.* ¶ 32.) Bell thought "they had it in for him," to protect Nguyen. (*Id.*) On September 30, 2011, Bell was given an appointment with Dr. Marlais. (*Id.* ¶ 33.) Dr. Marlais said that the tooth had to be extracted because it was abscessed and could not be saved. (*Id.*) Dr. Marlais extracted the tooth in moments. (*Id.* ¶ 34). Dr. Marlais gave Bell ibuprofen and antibiotics and instructions about how to care for the extraction site. (*Id.* ¶ 35.)

On October 7, 2011, Bell saw Wise for a post-operation visit. (*Id.* ¶ 36). He was a different dentist than the Wise that Bell saw on September 1, 2011. (*Id.*)

DISCUSSION

I. Standard of Review

Summary judgment is proper where the pleadings, discovery and affidavits demonstrate that there is "no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a). Material facts are those which may affect the outcome of the case. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). A dispute as to a material fact is genuine if there is sufficient evidence for a

1 reasonable jury to return a verdict for the nonmoving party. *Id.*

2 The party moving for summary judgment bears the initial burden of identifying
3 those portions of the pleadings, discovery and affidavits that demonstrate the absence of a
4 genuine issue of material fact. *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986). Where
5 the moving party will have the burden of proof on an issue at trial, it must affirmatively
6 demonstrate that no reasonable trier of fact could find other than for the moving party. On
7 an issue for which the opposing party by contrast will have the burden of proof at trial, as
8 is the case here, the moving party need only point out “that there is an absence of evidence
9 to support the nonmoving party's case.” *Id.* at 325.

10 Once the moving party meets its initial burden, the nonmoving party must go
11 beyond the pleadings and, by its own affidavits or discovery, set forth specific facts
12 showing that there is a genuine issue for trial. The court is only concerned with disputes
13 over material facts and “factual disputes that are irrelevant or unnecessary will not be
14 counted.” *Anderson*, 477 U.S. at 248. It is not the task of the court to scour the record in
15 search of a genuine issue of triable fact. *Keenan v. Allan*, 91 F.3d 1275, 1279 (9th Cir.
16 1996). The nonmoving party has the burden of identifying, with reasonable particularity,
17 the evidence that precludes summary judgment. *Id.* If the nonmoving party fails to make
18 this showing, “the moving party is entitled to a judgment as a matter of law.” *Celotex*, 477
19 U.S. at 322.

20 In considering a motion for summary judgment, the court must view the evidence in
21 the light most favorable to the non-moving party; if, as to any given fact, evidence
22 produced by the moving party conflicts with evidence produced by the non-moving party,
23 the court must assume the truth of the evidence set forth by the non-moving party with
24 respect to that fact. *Leslie v. Grupo ICA*, 198 F.3d 1152, 1158 (9th Cir. 1999).

25 **II. Claims**

26 Bell claims that Nguyen was deliberately indifferent to his serious dental needs
27 because she accidentally drilled a hole in his tooth while she was cleaning it on November
28 19, 2009, she did not acknowledge her mistake and she did not treat this tooth until it had

1 to be extracted. Bell also claims that Nguyen was deliberately indifferent because she
2 knew he was in pain, yet she did not prescribe pain medication for him. Bell claims that,
3 on September 1, 2011, Wise was deliberately indifferent to Bell's serious dental needs
4 because Wise failed to treat Bell's tooth even though he knew the tooth was causing Bell
5 excruciating pain.

6 **A. Legal Standard for Deliberate Indifference to Serious Dental Need**

7 A determination of "deliberate indifference" involves an examination of two
8 elements: (1) the seriousness of the prisoner's medical needs, and (2) the nature of the
9 defendant's response to those needs. *McGuckin v. Smith*, 974 F.2d 1050, 1059 (9th Cir.
10 1992) (overruled on other grounds by, *WMX Technologies, Inc. v. Miller*, 104 F.3d 1133,
11 1136 (9th Cir. 1997) (en banc)). Serious medical needs may include dental care needs.
12 *Hunt v. Dental Dep't.*, 865 F.2d 198, 200 (9th Cir. 1989) (dental care important medical
13 need of inmates). Deliberate indifference to a prisoner's serious medical needs violates the
14 Eighth Amendment's proscription against cruel and unusual punishment. *Estelle v.*
15 *Gamble*, 429 U.S. 97, 104 (1976).

16 A prison official is deliberately indifferent if he knows that a prisoner faces a
17 substantial risk of serious harm and disregards that risk by failing to take reasonable steps
18 to abate it. *Farmer v. Brennan*, 511 U.S. 825, 837 (1994) (equating standard with that of
19 criminal recklessness). The prison official must not only "be aware of facts from which
20 the inference could be drawn that a substantial risk of serious harm exists," but "must also
21 draw the inference." *Id.* Consequently, in order for deliberate indifference to be
22 established, there must exist a purposeful act or failure to act on the part of the defendant
23 and harm resulting therefrom. *McGuckin*, 974 F.2d at 1060.

24 Indifference may appear when prison officials deny, delay or intentionally
25 interfere with medical treatment, or it may be shown in the way in which prison officials
26 have provided medical care. *Id.* at 1062. However, "[a] difference of opinion between a
27 prisoner-patient and prison medical authorities regarding treatment does not give rise to a
28 § 1983 claim." *Franklin v. Oregon*, 662 F.2d 1337, 1344 (9th Cir. 1981). To prevail on a

1 claim involving choices between alternative treatments, a plaintiff must establish that the
2 course of treatment the doctors chose was “medically unacceptable under the
3 circumstances” and that they embarked on this course in “conscious disregard of an
4 excessive risk to [the plaintiff’s] health.” *Toguchi v. Chung*, 391 F.3d 1051, 1058–60 (9th
5 Cir. 2004). A claim of mere negligence related to medical problems is not enough to make
6 out a violation of the Eighth Amendment. *Franklin*, 662 F.2d at 1344.

7 **B. Claim Against Dr. Nguyen**

8 Bell argues that the focus of this lawsuit should be on his tooth number 16 and that
9 evidence showing that Nguyen adequately treated all of his other dental needs from
10 December 2008 through 2011 is not relevant to his claim. This argument is unpersuasive.
11 The manner in which Nguyen treated Bell’s dental needs over an extended period of time
12 is relevant to show her subjective state of mind toward Bell’s dental health. Bell does not
13 dispute that, except for tooth number 16, he has no complaints about how Nguyen treated
14 his dental needs. In her declaration, Nguyen states, “At no time did I intentionally or
15 knowingly cause Bell any pain, suffering, injury or harm. I was, at all times, motivated by
16 genuine concern for Bell’s health and well-being.” Nguyen Dec. ¶ 31. The fact that
17 Nguyen provided Bell with adequate treatment for many years in regard to many dental
18 issues supports the conclusion that she did not subjectively intend to deny, delay or
19 interfere with Bell’s dental treatment.

20 Further, assuming that Nguyen accidentally drilled a hole in Bell’s tooth number 16
21 while she was cleaning his teeth, that does not show that Nguyen was deliberately
22 indifferent toward Bell’s dental needs. Bell acknowledges that Nguyen’s conduct was
23 negligent, not intentional. Deliberate indifference requires an intentional act on the part of
24 the defendant; negligence does not give rise to a claim of deliberate indifference. *See*
25 *Franklin*, 662 F.2d at 1344.

26 A difference of opinion between a prisoner-patient and prison medical authorities
27 regarding treatment does not give rise to a § 1983 claim. *See id.* Bell’s main complaint
28 seems to be that Nguyen did not acknowledge that she drilled the hole in his tooth.

1 Nguyen eventually diagnosed Bell's tooth number 16 with decay on the outside, inflamed
2 gums, advanced bone loss and hyperemia. Bell and Nguyen had different opinions about
3 the cause of the problem with tooth number 16. That Nguyen's diagnosis was different
4 from Bell's does not establish that she was deliberately indifferent toward his serious
5 dental needs.

6 Bell states in his declaration that, at one visit with Nguyen, he asked her if tooth
7 number 16 could be filled and when she said no, it's best to leave it alone for now, Bell
8 decided that, if tooth number 16 could not be fixed, he "might as well hang onto it until I
9 can no longer stand it." Opp., Statement of Facts ¶ 5. At that time, at least, Bell agreed
10 with Nguyen's treatment plan for tooth number 16.

11 Nguyen did not treat or see Bell from October 2010 to September 2011. During
12 this time, Bell saw several other dental professionals and the medical records of these
13 visits do not indicate that Bell mentioned a hole in his tooth or that he was experiencing
14 pain from a hole in his tooth. Bell acknowledges that other dentists worked on his teeth for
15 the mouth-guard and deep gum cleaning which "worked out fine." *Id.* ¶ 6. Nguyen was
16 not responsible for failing to treat Bell's tooth during the time when he was being treated
17 by other dental professionals.

18 According to Bell's own statements, it was not until June 2011 that he began
19 experiencing pain in tooth number 16. This was eight months after he last saw Nguyen
20 and more than one year after she allegedly drilled the hole in his tooth in November 2009.
21 It was not until August 29, 2011, that Bell sent a health care request informing dental staff
22 that he was in pain. It was not until September 27, 2011 that Bell again saw Nguyen.
23 Nguyen's progress notes of this visit indicate that Bell told her that his "tooth has a hole in
24 it," that she examined the tooth and saw swelling and decay around it and recommended
25 extraction. Motion, Ex. A, AGO-00030. Nguyen raised Bell's priority status to DPC 1c
26 and scheduled him for extraction of tooth number 16. (Nguyen Dec. ¶ 27.) Although Bell
27 did not get tooth number 16 extracted on September 27, 2011, the day he saw Nguyen,
28 three days later, on September 30, 2011, Dr. Marlais extracted it. This evidence shows

1 that, contrary to Bell's claims, on September 27, 2011, Nguyen examined Bell's tooth
2 number 16, realized it needed immediate treatment and raised his priority status, ensuring
3 that he received the necessary treatment three days later. This evidence shows that
4 Nguyen did not delay or deny Bell treatment for his serious dental need.

5 Bell also faults Nguyen for failing to prescribe pain medication for him on
6 September 27, 2011, when she knew he was in pain from tooth number 16. However,
7 Nguyen's notes indicate that the CTF medical department had prescribed morphine and
8 acetaminophen for other pain Bell was experiencing. Motion, Ex. A, AGO-00030.
9 Nguyen states that, because Bell was already taking pain medication, she did not prescribe
10 additional pain medication for him. Nguyen Dec. ¶ 27. Bell's wish for more pain
11 medication establishes that he had a difference of opinion with Nguyen's conclusion that
12 he was already receiving sufficient pain medication. As stated previously, a difference of
13 medical opinion is insufficient to establish deliberate indifference. *See Toguchi*, 391 F.3d
14 at 1058 (difference of opinion regarding medication insufficient to establish deliberate
15 indifference unless plaintiff shows defendant's chosen choice was unacceptable under the
16 circumstances and was chosen intentionally in disregard of an excessive risk to the
17 plaintiff's health).

18 In summary, viewing the evidence in the light most favorable to Bell, he has failed
19 to raise a genuine dispute of material fact showing that Nguyen was deliberately
20 indifferent to his serious dental need. The undisputed evidence shows that Nguyen
21 provided Bell with proper dental care over a number of years for different dental health
22 issues. That Nguyen allegedly accidentally drilled a hole in Bell's tooth on November 19,
23 2009 is insufficient to show that she acted intentionally, which is required to show
24 deliberate indifference. Nguyen was not responsible for failing to treat Bell from October
25 2010 through September 2011 when other professionals treated him. When Bell next saw
26 Nguyen on September 27, 2011 with a painful tooth number 16, Nguyen diagnosed the
27 condition, informed Bell of her findings, and expedited extraction of the painful tooth, thus
28 ensuring Bell received adequate dental care. She noted that Bell was receiving pain

1 medication for non-tooth related pain and deemed that sufficient for Bell's pain from tooth
2 number 16. This difference of opinion regarding pain medication is insufficient to
3 establish deliberate indifference. Therefore, Nguyen's actions demonstrate that
4 subjectively she intended to provide Bell with proper care, not that she intended to
5 disregard or be indifferent to his dental care.

6 Accordingly, summary judgment on this claim is granted in favor of Nguyen.

7 **C. Claim Against Wise**

8 Bell claims that on September 1, 2011, Wise was deliberately indifferent to his
9 serious need to get treatment for his infected tooth number 16 by refusing to treat him.
10 However, defendants submit evidence showing that, on September 1, 2011, Bell was
11 treated by Dr. Marlais, not by Wise. (Motion, Ex. A, AGO-0031, Sept. 1, 2011 progress
12 note by Dr. Marlais.) In his opposition, Bell insists that the person he saw on September 1,
13 2011 was Wise, but acknowledges that, on October 6, 2011, he was treated by Wise and
14 that this person had a different appearance than the Wise he saw on September 1. Bell
15 argues that the dental professionals lied about their identities in order to avoid working on
16 his tooth. Opp., Statement of Facts ¶ 36. Defendants' explanation for this confusion is
17 that Bell probably received a ducat to see Wise but that he ended up seeing Dr. Marlais,
18 which can happen if one dentist finishes with his scheduled appointments before another
19 dentist on a particular day. Reply at 5, n.1.

20 In any event, whether Bell saw Wise or Dr. Marlais is not dispositive because the
21 dentist who saw Bell on September 1, 2011 treated him by conducting a triage
22 examination, ordering an x-ray and advising extraction or a sedative filling of tooth
23 number 16. Motion, Ex. A, AGO-00031.

24 Although Bell's tooth was not extracted that day as he wished, he received
25 appropriate dental care on September 1, 2011. The dentist that examined Bell that day set
26 the procedure in motion so that Bell could have tooth number 16 expeditiously treated by
27 extraction or filling. This treatment does not show that the dentist was deliberately
28 delaying or denying necessary dental treatment to Plaintiff. As discussed above, on

1 September 30, 2011, Dr. Marlais extracted tooth number 16, thus providing the care Bell
2 sought.

3 Viewing the evidence in the light most favorable to Bell, he fails to show a genuine
4 issue of material fact that Wise was deliberately indifferent to Bell's serious dental needs.
5 Therefore, summary judgment on this claim is granted in favor of Wise.

6 **C. Request to Amend Complaint**

7 In the event that defendants' motion for summary judgment is denied, Bell seeks
8 leave to amend his complaint to add additional defendants. In light of the fact that
9 defendants' motion for summary judgment is granted, this request is denied as moot.

10 **CONCLUSION**

11 Bell having failed to show that there are genuine issues of material fact as to any of
12 his claims, defendants' motion for summary judgment (doc. no. 24) is GRANTED as to all
13 claims against defendants Nguyen and Wise.

14 The Clerk shall enter judgment in favor of all defendants as to all claims, terminate
15 Docket No. 24, and close the file.

16 **IT IS SO ORDERED.**

17 **Dated:** April 15, 2014

18 
19 WILLIAM H. ORRICK
20 United States District Judge
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UNITED STATES DISTRICT COURT
FOR THE
NORTHERN DISTRICT OF CALIFORNIA

WILLIE BELL,

Plaintiff,

v.

DR. CHI NGUYEN, et al,

Defendant.

Case Number: CV13-01987 WHO


CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District Court, Northern District of California.

That on April 15, 2014, I SERVED a true and correct copy of the attached, by placing said copy in a postage paid envelope addressed to the person hereinafter listed, by depositing said envelope in the U.S. Mail.

Willie Bell H-90929
Central Institution for Men
P.O. Box 600 West Bldg. 252 U
Chino, CA 91708-0600

Dated: April 15, 2014


Richard W. Wieking, Clerk
By: Jean Davis, Deputy Clerk